

Religion and Rule of Law in China Today

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Introduction

In the politics of modern society there are two standards which have universal consensus in the world: the one is “democracy”, the other “rule of law.” These two standards are also reflected typically in legislation on religion. Of course the development of rule of law in human history has experienced a long and complicated process. There have been different ideas for legislation in different nations, each reflecting their various cultures. Although each country’s legislation played an authoritative role in the states and regions concerned, there was no universal acceptance or portability of important norms. With the emergence of “international law” in the social transition from modern to post-modern history, humankind realized the necessity and importance of universal standards in legislation for issues of common interest. Especially after entering the era of “globalization,” the idea that legislation should have universal usage and portability has grown with the idea of “universal values.”

But there is still considerable debate on the question of whether there should be universal agreement on all legislation. In human history various legislative traditions have existed. For example, in the Jewish and Christian traditions originally law was based on the idea that a “covenant” existed between God and man, which later became an important basis for the social “contract” in Western civilization. In this spirit of “covenant” and “social contract,” the principles of legislation and rule of law already have an innately religious dimension. The Greek and Roman legislative traditions of public law were later combined with the Jewish and Christian traditions of “covenant” by the medieval church, the result of which was the birth of a legal system for church law (canon law) and theocracy in medieval society. In Islam there was the tradition of “Sharia.” We also know that there were many other legal traditions such as the Code of Hammurabi in ancient Babylon and the Manu Code in ancient India. With all of these various legal traditions, it is not easy to reach a consensus.

In ancient China, the legal system was understood as the rule of the sovereign, which was actually the authority of the king or emperor in a feudalist system. During the pre-Qin period (pre-221 BCE) there was a legalist school of thought represented by Shen Buhai, Shang Yang and Han Fei, who advocated the rule of law instead of the rule of rites, and had the theory of “ruling the state and the people according to the law” and “taking law as the basic teaching.” But this law was in reality only the “law from the sovereign” used as a method for controlling the common people. Despite its name, it was not a true legal system, but instead represented the skill of ruling and controlling through political trickery. In this social structure of ancient China there was no legislation for religion at all. The relationship between politics and religion was always a relationship that subordinated religions. So the concept of rule of law regarding religion in China should be understood as a contemporary development which still has considerable potential and a new future.

I. Historical Reflection of Policy and Legislation on Religion in the People's Republic of China

The policy and legislation on religion by the revolutionary government headed by the Chinese Communist Party can be traced back to the Constitution Outline of Chinese Soviet Republic, the first independent government established by Mao Zedong in southeastern China. In January 1934 the Constitution Outline made provisions that in the territory of this new government power, workers, peasants, Red Army soldiers and all laboring people with their family members should be equal despite differences in sex, ethnicity and religion; the Chinese Soviet Power would also guarantee freedom of real religious belief and abide by the principle of separation between politics and religion.

At the first representatives conference on April 15, 1936 the Bopa government in the Tibetan regions passed, under "Red power," a provisional regulation concerning the Lama and Lama Temples. Among its ten regulations, the principle of separation between politics and religion was emphasized; religious interference in administration, education and jurisdiction was not allowed, but the lama as an individual was guaranteed the right to participate in politics.

In 1941, the Provisional Regulation to Protect the People's Right in Hebei, Shandong and the Henan Board Areas was promulgated giving people freedom of belief. In 1945, the provisional government in three revolutionary regions of Yili, Tacheng and Aletai in Xinjiang was established. In March 1946, the government promulgated a regulation that stressed administration of religion and required the registration of all religious associations. According to its principle of "respecting religion" in the outline of its administration, a department for religious affairs was organized in 1949.

With the founding of the People's Republic of China, the first National Political Consultative Conference issued on September 30, 1949 a document entitled the Common Principle of Chinese People's Political Consultative Conference, which had the characteristics of a provisional constitution. Among other principles, this document stated that all people in the People's Republic of China had freedom of thought, speech, publication, assembly, association, communication, person, residence, migration, religious belief and demonstration. Since then the freedom of religious belief remains a basic principle in the constitution of the People's Republic of China.

Since the founding of the People's Republic of China, four constitutions have been adopted. The first constitution was approved by the first session of the National People's Congress held on September 15-28, 1954. Among its provisions it declared that the citizens of the People's Republic of China have freedom of religious belief, and that citizens over 18 years old have the right to vote and to be elected without regard to nationality, ethnicity, sex, profession, social background, religious belief, educational attainment, property status, and period of residency. The second constitution was issued by the fourth National People's Congress on January 17, 1975, which ignored freedom of religious belief because of the influence of the "Cultural Revolution" at that time. The third constitution was approved by the first session of the fifth National People's Congress on March 5, 1978. A special phrase was used to express principles relating to religion, namely: citizens have the freedom to believe in religion, and also the freedom to not believe in religion, and to propagate atheism. The fourth constitution was issued by the fifth session of the fifth National People's Congress on December 4, 1982. This constitution has been revised four times, namely by the first session of the seventh National People's Congress on April 12, 1988, the

first session of the eighth National People's Congress on March 29, 1993, the second session of the ninth National People's Congress on March 15, 1999, and the second session of the tenth National People's Congress on March 14, 2004. This is the current constitution which has detailed regulations on religion in Chapter 2, "Basic Right and Duty of Citizens." Like its predecessors, Article 34 provides that citizens over 18 years of age have the right to vote and to be elected without regard to differences in nationality, ethnicity, sex, profession, family background, religious belief, educational attainment, property status, and period of residency. Article 36 has additional provisions: Citizens of the People's Republic of China have freedom of religious belief; no government department, social organization or individual may force citizens to believe or not to believe in religion, or discriminate against citizens on the basis of their belief or lack of belief in religion; the state protects normal religious activities; no one may use religion to conduct activities that destroy social order, harm citizens' health, or hinder the nation's educational system; and religious organizations and religious affairs may not be controlled by foreign powers.

The constitution is the basis for all legislation, so its provisions on religion should also be the basis and standard for dealing with religious problems. Nevertheless, since the articles in the constitution state general, sometimes abstract principles which are not always suitable for direct application in practice, it is still necessary for China to enact implementing legislation on religion. In this sense, the improvement in the rule of law for religious affairs is an important element in China's current development of governing the country by law and constructing a socialist country within the rule of law.

The idea of rule of law in religious affairs and the use of legislation on religion in contemporary China can be traced back to the beginning of the 1980's. On March 31, 1982, the Central Committee of the Chinese Communist Party issued the Basic Viewpoints and Basic Policies on Religious Problems in the Socialist Period of Our Country (namely, the well-known Document No. 19), which represents the real starting point of new policies of the Chinese Communist Party dealing with religion. Part 6 of Document No 19 provides clearly: "in order to guarantee the further normalization of religious activities, the state will henceforth establish workable laws and regulations on religion according to the legal procedure and through full consultation with representatives of religious circles." Soon after enactment of this document, the National People's Congress established a new constitution with fuller treatment of religious freedom principles. This constitutional change came at a time of reform in China and in a climate of opening-up to the outside world. There are still a lot of problems dealing with the understanding of religion in contemporary China. The best way to establish a consensus is the administration of religion by law. Consequently, there is an increasingly strong desire for a connection between religion and rule of law. Hence, we may well ask the questions: what laws on religion do we have now, and what kind of laws do we want to establish?

II. Laws and Regulations on Religion in China Today

Since 1978, in connection with the new reform in China, certain laws and regulations dealing with religious affairs have already been enacted. Responding to the spirit of the provisions in the Constitution, China has enacted other laws on religion. Generally speaking, there are two basic categories in laws governing the administration of religion in China today: first, laws enacted by the

National People's Congress and, second, regulations promulgated by the State Council and its departments.

In the first category, constitutional and statutory provisions enacted by the National People's Congress regarding freedom of religious belief include the following laws: Articles 34 and 36 in the Constitution of 1982 (successively amended four times); Article 3 in the Election Law of National People's Congress and Local People's Congress in Various Levels in the People's Republic of China and Article 5 in the Organization Law of People's Courts in the People's Republic of China on July 1, 1979; Article 7 in Ways for Electing Representatives of National People's Congress and Local People's Congress above County Level from the Chinese People's Liberation Army on June 10, 1981; Articles 11 and 53 in the Autonomy Law of Nationality Regions in the People's Republic of China on May 31, 1984; Article 2 in the Law for Assembly and Demonstration in the People's Republic of China on October 31, 1989; Article 8 in the Organization Law of City Residents Committee in the People's Republic of China on December 26, 1989; Articles 32, 137, 141, 148 and 149 in the Basic Law of Hong Kong Special Administrative Region in the People's Republic of China on April 4, 1990; Articles 25, 34, 128, 133 and 134 in the Basic Law of Macao Special Administrative Region in the People's Republic of China on March 31, 1993; and Article 12 in the Organization Law of Villagers' Committee in the People's Republic of China on November 4, 1998.

Additional civil, administrative, economic, social, criminal and other laws regarding the right and freedom of religious belief include the following: Article 251 in the Criminal Law of the People's Republic of China issued on July 1, 1979 and revised on March 14, 1997; Article 3 in the Military Service Law of the People's Republic of China on May 31, 1984; Article 77 in the General Provisions of the Civil Law in the People's Republic of China on April 12, 1986; Article 4 in the Compulsory Education Law of the People's Republic of China issued on April 12, 1986 and revised on June 29, 2006; Article 3 in the Labor Union Law of the People's Republic of China on April 3, 1992; Article 3 in the Law for Red Cross in the People's Republic of China on October 31, 1993; Article 12 in the Labor Law of the People's Republic of China on July 5, 1994; Article 7 in the Advertisement Law in the People's Republic of China on October 27, 1994; Article 8 in the Education Law of the People's Republic of China on March 18, 1995; and Article 4 in the Law for Promoting Private Education in the People's Republic of China on December 28, 2002.

In the second category, there are special decrees (namely administrative decrees) on religion and related articles of other decrees from the State Council, and special regulations (namely administrative regulations) on religion from departments under the State Council. Special decrees from the State Council include: Regulations for Administration of Places for Religious Activities (which was put to an end on March 1, 2005); Provisions of Administration for Religious Activities of Foreigners in the Territory of the People's Republic of China on January 31, 1994; and Regulations on Religious Affairs on July 7, 2004. Special articles concerning religious affairs include: Articles 12, 30 and 31 in the Regulations for Administration of Print on August 2, 2001; Article 7 in the Regulations for Chinese and Foreign Cooperation in Running Schools in February 2003; and Article 6 in the Provisional Regulations for Tax by Making Use of Land in Cities on December 31, 2006.

Administrative regulations on religion issued by the State Administration for Religious Affairs ("SARA") include: Ways for Employing Foreign Specialists in Religious Schools on

November 19, 1998; Rules and Regulations of Administration for Religious Activities of Foreigners in the Territory of the People's Republic of China on September 26, 2000; Ways for Examination and Approval of the Establishment of Places for Religious Activities and for Their Registrations on April 21, 2005; Ways for Record of Religious Clergy and Ways for Record of Clergy to Hold Main Posts in Places of Religious Activities on December 29, 2006; Ways for Administration of Reincarnation to the Living Buddha in Tibetan Buddhism on July 18, 2007; and Ways for Establishing Religious Schools on August 1, 2007.

In addition to the central government, the local people's congress and government on the provincial level have also issued similar regulations on religious affairs, the earliest coming from Guangdong. Other local authorities who have also issued such regulations include: Gansu (on November 16, 1991); Fujian (on September 11, 1992); Qinghai (on October 1, 1992); Tianjin (on February 21, 1994); Guangxi (on March 22, 1994); Ningxia (on June 7, 1994); Xinjiang (on October 1, 1994); Inner-Mongolia (on January 23, 1996); Heilongjiang (on July 1, 1997); Tianjin (on October 9, 1997); Hainan (on October 22, 1997); Yunan (on January 1, 1998); Jilin (on May 1, 1998); Guangdong (on June 30, 2000); Shaanxi (on September 23, 2000); Guizhou (on November 1, 2000); Hubei (on April 1, 2001); Jiangsu (on June 1, 2002); Hebei (on September 1, 2003); Shandong (on October 25, 2004); Shanghai (on April 21, 2005); Shanxi (on October 1, 2005); Henan (on January 1, 2006); Zhejiang (on June 1, 2006); Beijing (on July 28, 2006); Sichuan (on November 30, 2006); Liaoning (on December 1, 2006); Chongqing (on December 1, 2006); Hunan (on January 1, 2007); Tibet (on January 1, 2007); Anhui (on February 28, 2007); and Jiangxi (on July 1, 2007).

In summary, the current situation in China regarding laws or regulations on religion is that there are four "layers" within the two categories described above: first, articles in the Constitution and relating laws; second, administrative decrees from the State Council; third, regulations from SARA; and fourth, decrees and regulations from the local people's congress and local government. There is still no "decisive law"—no basic, comprehensive law on religion specially enacted by the National People's Congress—which should be the basis and authority of all other laws and regulations on religion.

III. Basic Idea of Legislation on Religion in China Today and Its Problem

Why is there hesitation or delay in China today to enact a basic, comprehensive law on religion? The main problem is that it is not easy to establish a consensus on the purpose and use of such a religion law in contemporary China. In order to have a basic, comprehensive law on religion, we have to clarify at least the following differences and reach a consensus:

First, there are two different opinions dealing with the understanding of religion in a Chinese context. One opinion interprets or explains religion from a positive and active perspective, believing that religion can adapt itself easily to the socialist society of contemporary China and make meaningful contributions to the conformity and harmony of this society. The other opinion stresses the differences between a religious consciousness and its world outlook and value system and a socialist consciousness and its value system, suggesting that because of these differences there is inevitably a tension or conflict between these two value systems, and that religion plays only a passive or negative role in a socialist society. Stated another way, although there might be a united front between religion and socialism on a social level, there can be no such unity on an

ideological level.

Second, there are two different interpretations of religious freedom in China. One interpretation claims that religious freedom includes the “absolute freedom” not just to have religious faith, thoughts and ideas, but also to engage in religious action and organization. The other interpretation claims that religious freedom includes “absolute freedom” only as to religious faith, thoughts and ideas, because such matters are within the area of privacy. But as to religious organizations and their activities, religion has here only “relative freedom”; since a religious organization is a social organization, it must be under legal control like all social organizations. Stated another way, when religion is no more merely a private, individual matter, but manifests itself instead as a religious organization engaging in activities with others in society, it necessarily must be transparent in its social existence and activities, which means it must obey social laws and accept social supervision.

Third, there are two different proposed purposes for legislation on religion in China. One proposed purpose is to protect religious freedom; religion legislation enacted for this purpose expresses respect for religious belief and other faiths in human society. But the other proposed purpose is to control religion, or at least to control religious organizations and activities. Those who support this purpose are unsure of the social function and influence of religion and therefore propose that, in order to avoid any problems religion may cause, it would be better to use laws to control and supervise religion. This difference reflects a wide disparity in understanding the social value and social significance of religion in Chinese society.

Fourth, related to the third point above, there are two different ways to implement legislation on religion in China. One way is that, because freedom of religious belief is a basic human right of all citizens and this basic right should be protected in the spirit of the Constitution, the law must guarantee this basic right of religious belief among the common people, and no violation will be allowed. But the other way to implement legislation on religion regards the legislation as a convenient way for the government’s administration of religion. Thus, the law on religion should focus primarily on the rules and regulations set for religion to meet the government’s need for the administration of religious affairs. In this way, the legislation is merely “from the government” and implemented “for the government.”

The above problems and differences explain the current challenges in enacting a basic, comprehensive law on religion. With such paradoxes in the understanding of legislation on religion, it is clear that we still have a long way to go. In my opinion, however, the most important thing to do now is not yet to strive for a consensus on what the legislation on religion should contain, but rather to reach a consensus in understanding the role of religion itself in the contemporary Chinese context. Only when it is clear how we “see”—namely understand—religion, will it be easy for us to know how to “deal with” religion. If we understand religion as an active, harmonious factor in Chinese society, then surely we will enact legislation on religion to “protect” instead of “restrict” its freedom.